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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

Before

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

WRIT PETITION No. 21355/1986

Between:

U.Bhujanga Bhandary,  
since deceased, rep.  
by his L.Rs.  
1a. Sridhara Bhandary

1b. Shivaprasad Bhandary

Both sons of late U.Bhujanga  
Bhandary, r/o.Ullal Guthu House,  
Peramannur village,  
Mangalore Taluk (DK)  
rep. by Sri.B.Ramadas Rai,  
s/o.late M.Ramanna Shetty,  
48 yrs. r/a.Athrabail House,  
Perne village and Post,  
Bantwal Taluk ( DK).

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.. PETITIONER

Amended as per Court  
Order dt.26.5.98.

( By Sri.B.L.Acharya, Adv, )

And:

1. The Divisional Commissioner  
and Appellate Authority  
under the Urban Land  
(Ceiling and Regulation Act)  
Mysore Division, Mysore.
2. The Special Dy.Commissioner  
and Competent Authority under  
the Urban Land (Ceiling &  
Regulation) Act, DK District,  
Mangalore.
3. The State of Karnataka.  
by its Secretary to Govt.,  
Housing & Urban Devp. Dept.,  
M.S.Building, Bangalore-1. .. RESPONDENTS

( By Sri.C.Ramakrishna, Adv. )

Hari Nath Tilhari...2.

This Writ Petition is filed u/A.226 of Constitution of India, praying to quash Ann.A bearing No.ULC.54/84-85 dt.21.4.1986 & Ann.B bearing No.ULC.SR.86/76-77 dt.31.10.84.

This Writ Petition coming on for hearing this day, the Court made the following: /

O R D E R

Heard the learned counsel for the petitioner Sri.B.L.Acharya and the learned Government Counsel.

2. By this petition, the petitioner has challenged the orders dated 21.4.1996 passed by the <sup>Commissioner</sup> Divisional ~~Commissioner~~ as Appellate Authority under the Urban Land (Ceiling & Regulation) <sup>Act</sup> ~~Act~~ 1976 and notifi<sup>cation</sup> dated 31.10.1984 passed by the respondent No.2-The Special Deputy Commissioner as Competent Authority.

3. Petitioner's case is that petitioner is an agriculturist possessing two items of lands situated in Peremannur village in Mangalore Taluk. He states that his lands were agricultural lands. The respondent No.2 initiated proceedings under section 8(1) of the Act. Thereupon the petitioner filed an application under section 20 of the Urban Land (Ceiling

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Land (Ceiling & Regulation) Act, 1976, before the Government for grant of exemption and only sent a copy of that application to respondent No.2. The petitioner uses the word "by way of objections" copy of which has been annexed as Annexure-C to the writ petition. Petitioner's further case is that land had been inherited by him and his brother half and half and out of the total extent of land of 1 acre 12 cents, only 0.56 cents belong to the petitioner and other 0.56 cents of land belongs to his brother as per Will under which he got the property. The 2nd respondent declined to consider Annexure-C as objections and confirmed his earlier decision declaring the petitioner to be in possession of excess land. The petitioner having felt aggrieved, filed the appeal and the Appellate Authority dismissed the appeal by order-Annexure.A to the writ petition namely order dt.21.4.1986.

4. On notice being issued, the counter affidavit supported by an affidavit has been filed on behalf of the respondents. In the objections filed on behalf of the respondents, it has been stated vide para 3 that the draft statement was served on the petitioner on 26.8.84. The petitioner did not file any objection as contemplated

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under Sec.8(1) of the Act and as no objection was filed, there was no option to the authorities but to issue a final statement under Sec.9 of the Act. It has been stated that the petitioner filed an application to the State Govt. under Sec.20 of the Act seeking exemption only after the draft statement had been issued <sup>Section 8(1) of the Act</sup> by the 2nd respondent. But as the petitioner did not file any objections to the draft statement, the respondent No.2 proceeded to acquire the land and issued notification under Sec.10(1). Respondent's case is that the petitioner did not choose to file reply to the <sup>proposed draft statement</sup> ~~notification~~. It has been stated by the respondents that so far as application under Sec.20 is concerned, respondent No.1 could not pass any orders thereon and deal with those objections. It was for the State Govt. to consider whether to grant exemption or not even then the copy of application has been submitted before the Competent Authority and that respondents do not appear to deny the filing of application under Sec.20 of the Act seeking exemption and the application was made to the Govt. and that copy thereof was forwarded to the Competent Authority without filing any further objections.

5. Learned Counsel for the petitioner contended

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that as copy of application under Sec.20 which had been made to the Govt. seeking exemption even<sup>if</sup> it appears no other objections was filed, authority should have treated the same as objections. In alternative, learned Counsel contended that atleast when this intimation was given to the Competent Authority that petitioner is seeking exemption, they should have awaited and seen that it was filed within reasonable time. No orders so far has been passed under Sec.20 and it is pending as a result of inaction of the authorities petitioner is being deprived of the benefit which he could have got under Sec.20. Learned Counsel contended that in view of Sec.20 of the Act and application being made thereunder and no orders having been passed by the Govt. one way or the other, the passing of notification under Sec.10(1) has an effect of rendering the application infructuous ineffective with due disposal thereof. In alternative, petitioner's counsel submitted that the land had been inherited by him and his brother in equal shares and only 0.56 cents did come to the petitioner's share. The authority should have decided this question. When no objection under Sec.8(1) has been filed indicating this fact that it was inherited from the mother and shared equally among the brothers, there was no

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question of authority imagining these facts. But there is one thing very clear that the application under Sec.20 of the Act had been made by the petitioner to the Govt. seeking exemption from the Urban Land (Ceiling and Regulation) Act. The State Govt. is also a party. It has <sup>not</sup> been clearly stated or averred as to whether application under Sec.20 has been disposed of or not. Petitioner's counsel insisted that the application as not having disposed of, the authority should have awaited for that before declaring the excess area. If we read Secs.8, 9. 10 and 20 together, definitely in such cases where a person is going to be deprived of his property and State Govt. has not disposed of application, the authorities were expected to await the orders of the Govt. and the Govt. was required to act expeditiously if it wanted the ceiling proceedings to be concluded at the earliest. The Govt. cannot be allowed to act <sup>ask below</sup> hot and cold on one hand by not disposing of application under Sec.20 seeking exemption and the authority declaring the land as excess. No doubt, petitioner should have filed the further objections. The petitioner might not have filed because he has filed Sec.20 application before the Govt. and must have awaited the Govt.'s decision.

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In such circumstances in my opinion, it appears just and proper to allow the writ petition as the appellate authority also failed to understand the impact of Govt.'s failure to pass any order on the application under Sec.20 and the failure of the Competent Authority to await that order. It is well settled that no person is to be deprived of justice, <sup>A</sup> nor he has to be denied benefit of laws nor be subjected to injustice for the fault or failure of State instrumentalities and authorities or their error. It is as much true of state and its instrumentality as of courts and applicable to them as well.

Thus considered in my opinion, the writ petition deserves to be allowed. The order of the appellate authority has to be set aside. The order of the competent authority including <sup>A direction for A</sup> notification under Sec.10(1) of the Act has got to be quashed. It is hereby directed that the application moved under Sec.20 of the Act by the petitioner before the State Govt. if it has not been disposed of, should be disposed of by an speaking order at the earliest and in every case within four months from the date of communication of this order and the order disposing of application

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under Sec.20 should be communicated to the petitioner and the competent authority <sup>of any competent Authority to issue fresh order</sup> Thereafter, <sup>notice u/s 20 according to law</sup> if the petitioner finds it necessary or is advised to file any objections, he may file objections under Sec. 8/9<sup>th</sup> of the Act and that may be disposed of. Until disposal of the case on merits, the parties should maintain statusquo.

The writ petition, as such, is allowed with the above directions. Let the direction as above in the nature of writ of mandamus be issued to respondents 1 and 2.



Sd/-  
JUDGE

bss/-